

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

STEPHAN MORRIS, CLERK
CHEYENNE

WELLS FARGO BANK N.A.,

Plaintiff,

v.

Case No. 2:12-CV-00221-ABJ

NORTHERN ROCKIES NEURO-SPINE,
P.C., a Wyoming corporation; JOHN H.
SCHNEIDER; MICHELLE SCHNEIDER;
SCHNEIDER LIMITED PARTNERSHIP, a
Wyoming limited partnership; JOHN
SCHNEIDER REVOCABLE TRUST U/A/D
NOVEMBER 20, 2007; MICHELLE
SCHNEIDER REVOCABLE TRUST U/A/D
NOVEMBER 20, 2007; and SCHNEIDER
MANAGEMENT, LLC, a Wyoming limited
liability company,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE

This matter comes before the Court on Plaintiff's Motion to Strike the Interrogatory Answers of Schneider Defendants Offered to Oppose Wells Fargo Bank's Motion for Summary Judgment, ECF No. 36. Plaintiff seeks to strike the portions of Defendants Schneider's answer to Wells Fargo First interrogatories that were included in Defendants' brief in opposition to Wells Fargo's motion for summary judgment arguing that they are "sham affidavits."

First, the Court notes that motions to strike are disfavored. Second, the Court notes that Plaintiff has incorrectly quoted the three factors from *Franks* and has conveniently left out the portion of those factors which points to when a “sham affidavit” is typically introduced: after one has given sworn testimony in a deposition. *See Franks v. Nimmo*, 796 F.2d 1230, 1237 (10th Cir. 1986); ECF No. 36 at 2. In this case, Defendants Schneider submitted the answer to Wells Fargo’s first interrogatories before Dr. and Mrs. Schneider were deposed. *See* ECF No. 35-1 at 6; ECF No. 33-7 at 2; ECF No. 33-8 at 2.

Lastly, the Court notes that the Plaintiff attached portions of the same affidavit to its motion for summary judgment as support for that motion. *See* ECF No. 33-6; ECF No. 35-1. In the instant motion, Plaintiff does not argue why some portions of the alleged sham affidavit should be struck and some should not. For all of the preceding reasons, the Plaintiff’s Motion to Strike, ECF No. 36, is hereby DENIED.

Dated this 20th day of January, 2014.



Alan B. Johnson
United States District Judge